



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,172	03/25/2004	Timothy S. Paek	MS307451.1/MSFTP607US	6811
27195 7590 04/17/2009 AMIN, TUROCY & CALVIN, LLP 127 Public Square 57th Floor, Key Tower CLEVELAND, OH 44114			EXAMINER LOVEL, KIMBERLY M	
			ART UNIT 2167	PAPER NUMBER
			NOTIFICATION DATE 04/17/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket1@thepatentattorneys.com  
hholmes@thepatentattorneys.com  
lpasterchek@thepatentattorneys.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte:* TIMOTHY S. PAEK, SUSAN T. DUMAIS,  
and RONALD K. LOGAN

---

Application No. 10/809,172  
Technology Center 2100

---

Mailed: April 16, 2009

---

Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 13, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER’S ANSWER, GROUNDS OF REJECTION**

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner’s Answer mailed November 17, 2008 under the heading “Grounds of Rejection” is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner’s Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading “New Grounds of Rejection” in the Examiner’s Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8<sup>th</sup> ed. Rev. 7, July 2008) for details.

A review of the Examiner’s Answer finds a new Ground(s) of Rejection that has not been provided the required heading “New Grounds of Rejection” and/or which does not include the approval of the TC Director or his/her designee.

Specifically, though the Examiner’s Answer does provide the required heading, the Examiner did not include the approval of the TC Director or his/her designee. Appropriate correction is required.

**EXAMINER’S ANSWER, EVIDENCE RELIED UPON**

Section 1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 7, July 2008) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed November 17, 2008 is deficient because the "Evidence Relied Upon" section fails to include the reference Wolton et al. US PGPub 2004/0030741 cited on page 15 in the Examiner's Answer's grounds of rejection of claim 13 under 35 U.S.C. § 103(a). Additionally, the Examiner's Answer mailed November 17, 2008 is deficient because "Evidence Relied Upon" section fails to include the reference Montague US PGPub 2005/0168488 on page 16 in the Examiner's Answer's grounds of rejection of claim 14 under 35 U.S.C. § 103(a). Correction is required.

### **CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

- 1) to vacate the Examiner's Answer mailed November 17, 2008;
- 2) to generate a revised Examiner's Answer correctly setting forth the Evidence Relied Upon section and to correct other sections of the Answer as may be required; and
- 3) to include the approval of the TC Director or his/her designee (as may be required for any new grounds of rejection); and
- 4) for such further action as may be appropriate.

Application No. 10/809,172

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWB/nhl

AMIN, TUROCY & CALVIN, LLP  
127 Public Square  
57th Floor, Key Tower  
CLEVELAND OH 44114